

REMARKS

The Office Action mailed December 1, 2004 has been received and reviewed. Claims 1 through 28 were pending in the application. All stand rejected. Claims 2, 8, 13 and 17 are to be canceled. The application is to be amended as previously set forth. All amendments and claim cancellations are made without prejudice or disclaimer. No new matter has been added. Reconsideration is respectfully requested.

A. Examiner Interview:

The applicants would like to thank the Examiner for the courtesy extended applicants' representatives at the interview of February 8, 2005. As discussed at the interview (and as is more thoroughly discussed herein), applicants would present the foregoing clarifying amendments to the application, which should overcome the outstanding objections and rejections, and place the application in condition for allowance. As also discussed at the interview, applicants supply herewith deposit receipt and Budapest Treaty declaration for the PER.C6 cell line. (*See, e.g.*, claims 9 and 18).

B. The Specification:

As per the Examiner's request, applicants have updated the "cross-reference" information.

C. 35 U.S.C. § 112:

The pending claims stand rejected as assertedly containing "new matter" with respect to the claims extending to cells comprising a first nucleic acid sequence that not only comprises E1A and E1B genes but also a portion of an adenovirus pIX gene. Applicants have amended the claims as discussed at the interview, and partially in view of these amendments, request that the rejection be withdrawn.

Specifically (and as discussed at the interview), applicants have amended the claims to set forth clearly that the claimed cells comprise a first nucleic acid in their genome that encodes adenoviral E1A and E1B gene products, but lacks a sequence encoding pIX. Basis for the amendment is found in various places in the as-filed specification, but specific basis can be found

in claim 8 of the application. Accordingly, this rejection should be withdrawn.

Claims 1 through 11 were rejected under 35 U.S.C. § 112 to the extent they extended beyond isolated or cultured adenovirus packaging or producer cells. As discussed at the interview, applicants have amended the claims to clearly set forth that the cells claimed in claims 1 through 11 are isolated cells useful as adenovirus packaging cells. Accordingly, this rejection should be withdrawn.

D. 35 U.S.C. §§ 102 & 103:

The pending claims stand rejected as assertedly being anticipated or made obvious in view of Imler, Wilson, Graham, and possibly Gregory. As discussed at the interview, none of these references discloses or makes obvious an isolated adenovirus packaging cell comprising, in its genome, a first nucleic acid sequence encoding adenovirus E1A and E1B gene products but lacking nucleic acid sequences encoding adenovirus pIX as claimed in the amended claims. Accordingly, these rejections should be withdrawn.

E. Obviousness-type Double Patenting:

The pending claims stand rejected as assertedly being obvious under the judicially created doctrine of obviousness type double patenting in view of U.S. Patents 5,994,128, 6,033,908, 6,265,212, 6,306,652, and 6,692,966 and provisionally rejected under the same doctrine in view of USSN 10/125,751 and USSN 10/219,414. Submitted herewith are appropriately executed terminal disclaimers that should overcome the rejections.

In view of the foregoing, the application should be in condition for allowance. If, however, questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Allen C. Turner', written over the typed name.

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Enclosures: Budapest Treaty Declaration
Terminal Disclaimers

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